

REMARKS

Claims 1-15 and 20-33 are pending in the application.

Claims 1-14 and 20-32 have been rejected.

Claims 15 and 33 have been objected to.

Claim 2 has been amended, as set forth herein.

I. **REJECTION UNDER 35 U.S.C. § 103**

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Widegren (US Patent No. 6,374,112).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986).

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Yamato (US Patent No. 5,694,390).

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Campbell (US Patent 2003/0140159).

Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) in further view of Geagan III (US Patent No. 6,263,371).

Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) and Geagan (US Patent No. 6,263,371) and in further view of Thorson (US Patent No. 4,440,98).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

Constantin allocates resources along a path through a network in response to a connection request message. Constantin, Abstract. In general terms, using cell delay calculations, if each successive resource element in the prospective path meets the delay budget, that resource element

and path are utilized for the connection; if not, other paths are explored. See Constantin, generally. Thus, Constantin teaches, generally, determining and finding a path through a plurality of resource elements that meets the required delay budget.

The Office Action argues that Constantin describes “enabling optimization of the network bandwidth when the measure parameter differs from a predetermined value”, citing Figure 4, step 114, Col. 6, line 63 through Col. 7, line 11. For ease of reference, the cited text is set forth in its entirety below:

At step 114, the network element allocates resources for the virtual connection associated with the connection request message received at step 100. The amount of resources allocated at step 114 is at least sufficient to process data units on the connection without exceeding the delay budget calculated at step 112. The amount of resources necessary to stay within the delay budget may be calculated using conventional techniques. If insufficient resources are available in the network element to process data units within the delay budget, the network element sends a message back to the network element from which it received the connection request message. That network element then will attempt to form the requested connection using a prospective path which does not include the network element having insufficient resources. Under such conditions, step 116 would not be performed.

Constantin does not “enable optimization of the network bandwidth” as that term is utilized and described in Applicant’s specification. Constantin simply allocates the resource elements in order to stay within the delay budget. Col. 7, lines 1-3. If the delay budge cannot be met, the connection request is not forwarded -- no connection is made. Constantin does not describe or disclose enabling optimization of the network bandwidth -- but merely allocates the resources if the connection can be made within the delay budget. Therefore, Constantin does not disclose or

describe this feature. For this reason, the proposed combination fail to render obvious independent Claims 1 and 20.

The Daniel reference is cited as disclosing a PBX used in a packet network.¹ Though Daniel generally discloses a PBX, there is no teaching or suggestion to combine Daniel into Constantin (or vice versa) or any rational underpinning to support the legal conclusion of obviousness: The Office Action merely identifies a reference disclosing a PBX network, but fails to establish a reasonable basis for combining the teachings of Constantin and Daniel. For this reason, the proposed combination fails to render obvious independent Claims 1 and 20.

The Office Action next argues that Widegren (a newly cited reference) discloses adapting frame size of packets to meet a target QOS (delay), and that increasing or decreasing size of a packet changes the path delay of the packet, citing Col. 15, lines 2-9. Office Action, page 3. Widegren is directed to radio access and resource allocation in a specific mobile telephone system. Widegren, Abstract. Widegren merely discloses that the segmentation/reassembly block 244 is used “to adapt the data streams to the appropriate frame size used over the radio interface.” Widegren, Col. 15, lines 5-9. This appears to describe processing of a data stream into frame sizes specified by the radio (wireless) interfaces (e.g. UMTS) – which seems conventional. The cited portion of Widegren does not describe enabling optimization including reducing the size of voice packets transported across the network (a PBX network).

¹ A prior final office action rejected the claims under section 102 and 103 based on Daniel. These rejections were abandoned, and now the current Office Action merely utilizes Daniel as teaching a PBX network using data packets.

For this reason, the proposed combination fail to render obvious independent Claims 1 and 20.

Accordingly, the Applicant respectfully requests withdrawal of all of the § 103 rejections of independent Claims 1 and 20, and their dependent Claims 3-15 and 21-33, based on the combination of Constantin, Daniel and Widegren.

With respect to the rejection of Claim 2 based on Constantin, Daniel and Thorson, the Office Action has failed to establish a prima facie case of obviousness as none of the references disclose, teach or suggest “wherein adjusting the bandwidth includes reducing the size of voice packets transported across the PBX network. Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection of independent Claim 2 based on the combination of Constantin, Daniel and Thorson

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.


If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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